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SUBJECT: LANDMARK DECISION FOR WOMEN'S RIGHTS IN NEPAL

1. SUMMARY: In a victory for women's rights, the Supreme Court of Nepal declared null and void a law which had required women to return inherited property to their parent's family after marriage. Two committees, one in the process of being formed, have been ordered by the court to review the Muluki Ain (Nepal's Civil Code) and the Constitution in order to identify gender-biased legislation and to offer suggestions for amendment. END SUMMARY.

2. A year and a half ago, Sapana Pradhan Malla and Meera Dhungana, the President and Treasurer of the Forum for Women, Law and Development (FWLD), filed a writ petition with the Supreme Court. (NOTE: Malla is a 2005 IVP nominee. END NOTE.) Malla and Dhungana asked that the court review Section 12 (A) of the Provision of Inheritance by Default of Muluki Ain, 1963. This section of law states that a woman must return any property she has inherited from her parents when she marries. Finding the law to be discriminatory towards women, the court declared it null and void on July 29, 2004.

3. The Supreme Court also issued a directive to the Prime Minister's Office and the Cabinet to set up a panel to conduct a study on discriminatory laws against women. This panel is to consist of the Secretary of the National Human Rights Commission and representatives from the Ministry of Women, Children and Social Welfare, the Ministry of Law, Justice and Parliamentary Affairs, public organizations familiar with the issue and one sociologist. Though the panel has yet to form, at the request of the Cabinet a similar committee was formed last month to perform a similar task. The existing committee is comprised of the Secretary, Joint Secretary and Under Secretary of the Ministry of Law, Justice and Parliamentary Affairs, a representative from the office of the Attorney General, the President of the Nepal Bar Association and the spokesman for the Supreme Court.

4. Dr. Ram Krishna Timalaena, Joint Registrar and spokesperson for the Supreme Court, emphasized that the committee will completely review the National Code as well as the Constitution. Timalaena said the committee hopes to look at various models of civil codes from the international community; Japan, Germany and the U.S., among others. The committee would then draft legislative recommendations to eventually be reviewed and acted upon by the Nepal's Parliament. This large task will take time, however, and Timalaena expects the initial review to take at least one year. [NOTE: The FWLD in 2000 composed a report compiling laws it found to be gender biased. 118 legal provisions within 54 laws were identified as discriminatory towards women. FWLD plans to release an updated report by the end of 2004. Timalaena said the committee would examine such reports when reviewing legislation. END NOTE.]

5. COMMENT: The Supreme Court's decision is a major accomplishment, particularly from a traditionally non-activist court. Moreover, it is an example of a GON body actually making good on an issue that the Maoists pay lip service to. A thorough evaluation of all legislation is needed, and the review committees should only be seen as an initial step. Once discriminatory laws are identified reform will be needed not just through the courts, but through the legislative process as well. Unfortunately, until a parliament is in place, new laws for the protection of women cannot be created. END COMMENT.

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